

2040. APPEALS OF STATE ADVERSE ACTIONS FOR MEDICAID SKILLED NURSING AND INTERMEDIATE CARE FACILITIES (NOT APPLICABLE TO FEDERAL TERMINATIONS OF MEDICAID FACILITIES)

Denials, terminations, cancellations, and nonrenewals of agreements with facilities participating in Medicaid-only are State administrative actions and decisions.

State appeal procedures must be made available to facilities in cases of nonrenewal, denial, cancellation, or termination of the provider agreement. It is up to the State to designate the office or official having authority to hear and decide Medicaid appeals. Although the State retains considerable flexibility in developing its appeal procedures, the procedures must, at a minimum, provide for an evidentiary hearing either before or within 120 days after the effective date of the adverse action. The State must also provide an informal reconsideration prior to taking adverse action if it elects to provide a full evidentiary hearing after the effective date of the adverse action (42 CFR 431.151-154).

A. Informal Reconsideration.--The State may develop and implement its own reconsideration proceedings. The process must include:

1. Timely notice of the reason for the action;
2. A reasonable opportunity for the facility to refute those reasons in writing; and
3. A written decision prior to the effective date of the adverse action.

B. Evidentiary Hearing.--The evidentiary hearing must include:

1. Timely written notice to the facility of the findings upon which the termination or denial is based, and disclosure of the evidence on which the decision is taken;
2. An opportunity for the facility to appear before an impartial decision maker to refute the basis for the decision;
3. An opportunity for the facility to be represented by counsel or another representative;

4. An opportunity for the facility or its representatives to be heard in person, to call witnesses, and to present documentary evidence;

5. An opportunity for the facility to cross-examine witnesses; and

6. A written decision by an impartial decision maker, setting forth the reasons for the decision and the evidence upon which the decision is based.

C. Judicial Review.--Neither Federal Medicaid law nor regulations provide for judicial review of these appeal proceedings. Judicial review is governed by State law.

D. Impartial Decision Maker (Hearing Officer).--States have flexibility in selecting individuals to conduct the reconsideration and hearing proceedings. However, in both proceedings, certain individuals should not serve as decision makers.

In reconsideration proceedings, the surveyors, as well as other persons directly involved in gathering and providing evidence upon which the adverse action is based, are ineligible to make the decisions. (One person should not be both witness and judge.) However, the person who made the original determination based on the surveyors' findings is not ineligible to decide the reconsideration. If the decision was originally made at the highest level, the appeal decision should also be made there. However, if the original decision was made by a regional supervisor, someone higher in authority should review the appeal.

In administrative hearings all persons directly involved in either the survey or the reconsideration process are ineligible.